Regulation (EU) No 248/2014 of the European Parliament and of the Council of 26 February 2014 amending Regulation (EU) No 260/2012 as regards the migration to Union-wide credit transfers and direct debits (Text with EEA relevance)

REGULATION (EU) No 248/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 February 2014

amending Regulation (EU) No 260/2012 as regards the migration to Union-wide credit transfers and direct debits

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[(1)],

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Together with Regulation (EC) No 924/2009 of the European Parliament and of the Council[(3)], Regulation (EU) No 260/2012 of the European Parliament and of the Council[(4)] constitutes an important building block in the completion of a single euro payments area (SEPA), where no distinction between cross-border and national payments in euro is to be made. The main objective of Regulation (EU) No 260/2012 is the migration from national credit transfer and direct debit schemes to harmonised SEPA credit transfer (SCT) and SEPA direct debit (SDD) schemes, inter alia, by providing Union citizens with a unique international bank account number (IBAN) that can be used for all SCTs and SDDs denominated in euro.

(2) Regulation (EU) No 260/2012 has provided for the SEPA migration to take place by 1 February 2014 in order to allow payment service providers and payment service users sufficient time to adapt their processes to the technical requirements that the migration to SCT and SDD entail.

(3) Since the adoption of Regulation (EU) No 260/2012 the Commission and the European Central Bank have closely monitored the progress of SEPA migration. Several meetings with Member States, national public authorities and market participants have been held. The European Central Bank has regularly published progress reports on SEPA migration on the basis of payment data collected by national central banks. Those

reports indicate that a number of Member States in the euro area are well on track with migration rates for SCT currently close to 100 %. The large majority of payment service providers have reported that they are already SEPA-compliant. However, in several other Member States the migration rates are lagging behind expectations. This is particularly the case for SDD.

(4) On 14 May 2013, the ECOFIN Council in its conclusions again stressed the importance of SEPA migration. It was noted that the SEPA migration was far from complete and that immediate efforts would be required by all market participants to complete SEPA migration in time. An action plan was adopted in which merchants, corporates, SMEs and public administrations were invited to immediately take the necessary concrete internal steps to adapt their processes and inform their clients of their IBAN details.

(5) Despite the considerable efforts made by the European Central Bank, Member States, their national public authorities and market participants during recent months, the latest migration statistics show that the overall migration rate in the euro area to SCT has only increased from 40 % in June 2013 to around 64 % in November 2013, while the overall migration rate towards SDD has only reached 26 %. While the national figures show good progress in several Member States, a significant group of Member States is lagging considerably behind the expected migration rates. It is therefore very unlikely that all market participants will be SEPA compliant by 1 February 2014.

(6) From 1 February 2014, banks and other payment service providers will have to refuse to process credit transfers or direct debits that are not SEPA-compliant because of their legal obligations, although, as is currently already the case, they technically could process those payments by continuing to use existing legacy payment schemes alongside SCT and SDD. Failing full migration to SCT and SDD, delays in those payments cannot therefore be excluded. All payment services users, and particularly SMEs and consumers, could be affected.

(7) It is essential to avoid unnecessary disruption of payments resulting from the fact that SEPA migration is not fully completed by 1 February 2014. Payment service providers should therefore be allowed, for a limited period of time, to continue the processing of payment transactions through their legacy schemes alongside their SCT and SDD schemes, as they are doing now. A transitional period should therefore be introduced to allow for the continuation of such parallel processing of payments in different formats. Considering the current migration figures and the expected pace of migration, a one-off additional transitional period of six months is appropriate. Such ‘grandfathering’ of non-SEPA compliant legacy systems should be considered to be an exceptional measure and should therefore be kept as short as possible, as rapid and comprehensive migration is necessary in order to achieve the full benefits of an integrated payments market. It is also important to limit in time the costs to the payment service providers of the continued use of the legacy payment schemes in parallel with the SEPA system. Payment service providers that have already fully migrated to SEPA might consider providing payment service users that have not yet migrated with conversion services during the transitional period. During the transitional period, Member States should refrain from applying

penalties to payment service providers that process non-compliant payments and to payment service users that have not yet migrated.

(8) Several large users of direct debit instruments have already indicated that they plan to migrate close to the end-date. Any postponing of those migration projects could lead to temporary stress on incoming payments and cash flows, and hence on treasury levels of the companies concerned. Such late migration on a large scale could also create certain bottlenecks, in particular at the level of banks and software vendors which may be faced with certain capacity constraints. The additional period for phasing in the new system would allow for a more gradual approach. Market participants that have not yet started to implement the necessary adaptations for SEPA compliance are called upon to do so as soon as possible. Market participants that have already started to adapt their payment processes should nevertheless complete the migration as rapidly as possible.

(9) In view of the overall objective to realise coordinated and integrated migration, it is appropriate that the transitional period apply to both SCT and SDD. Different transitional periods for SCT and SDD would cause confusion to consumers, payment service providers, SMEs and other payment service users.

(10) For reasons of legal certainty and in order to avoid any discontinuity to the application of Regulation (EU) No 260/2012, it is necessary that this Regulation enter into force as a matter of urgency and that it apply, with retroactive effect, from 31 January 2014.

(11) In view of the urgency of the matter, an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community, should apply.

(12) Regulation (EU) No 260/2012 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

In Article 16 of Regulation (EU) No 260/2012, paragraph 1 is replaced by the following:

1. By way of derogation from Article 6(1) and (2), PSPs may continue, until 1 August 2014, to process payment transactions in euro in formats that are different from those required for credit transfers and direct debits pursuant to this Regulation.

Member States shall apply the rules on the penalties applicable to infringements of Article 6(1) and (2), laid down in accordance with Article 11, from 2 August 2014.

By way of derogation from Article 6(1) and (2), Member States may allow PSPs to provide PSUs, until 1 February 2016, with conversion services for national payment transactions enabling PSUs that are consumers to continue using BBAN instead of the payment account identifier specified in point (1)(a) of the Annex on condition that interoperability is ensured by converting the payer's and the payee's BBAN technically and securely into the respective payment account identifier specified in point (1)(a) of the Annex. That payment account identifier shall be delivered to the initiating PSU, where appropriate before the payment is executed. In such a case PSPs shall not levy any charges or other fees on the PSU directly or indirectly linked to those conversion services..